

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

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4 UNITED STATES OF AMERICA,)
)
5 Plaintiff,)
)
6 vs.) No. 1:09-MJ-00319-JCH-WDS
)
7 HOWARD DE LA CRUZ-BANCROFT,)
)
8 Defendant.)

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14 HEARING ON INTERLOCUTORY APPEAL
15 BEFORE THE HONORABLE JUDGE JUDITH HERRERA
 UNITED STATES DISTRICT JUDGE

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18 DECEMBER 17, 2009

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1 THE COURT: Please be seated.

2 Good afternoon. We're on the record in USA
3 versus De La Cruz-Bancroft, CR-09-MJ-319.

4 MR. WALSH: Good afternoon, Your Honor, Dave
5 Walsh on behalf of the United States.

6 THE COURT: Good afternoon, Mr. Walsh.

7 MR. HOTCHKISS: Good afternoon, Judge. Todd
8 Hotchkiss for Mr. De La Cruz-Bancroft, who is present.

9 THE COURT: All right. Good afternoon.

10 MR. HOTCHKISS: Good afternoon.

11 THE COURT: We're here on the notice of
12 appeal that was filed by the government in this case.
13 Are we ready to proceed?

14 MR. WALSH: We are, Your Honor.

15 May it please the Court, Counsel.

16 Your Honor, with respect to the procedural
17 background on this case, the government filed a
18 two-count information against the defendant for
19 possessing a firearm in a federal facility in
20 violation of 18 USC 930, and for also possessing a
21 fraudulent identification card.

22 The defendant filed some motions. The case
23 was assigned to Judge Schneider. At the motions
24 hearing, Judge Schneider granted the defendant's
25 motion to dismiss the 18 USC 930 count, on grounds

1 that the defendant was carrying a holstered weapon
2 prior to entering a federal facility.

3 The standard of review for this appeal is
4 de novo, so the Court gets to look at it with fresh
5 eyes and a fresh perspective.

6 This incident took place at the Chavez
7 federal building located on 500 Gold Street. There's
8 a security checkpoint manned by officers inside the
9 entrance of the building. There's a post office on
10 the ground floor. There's also a federal bankruptcy
11 court on the 11th floor. There's a federal health
12 clinic there where I recently got a swine flu shot.
13 And there is also a Veterans Administrations office
14 located inside the building.

15 To provide a little overview of 18 USC 930,
16 Your Honor, the statute prohibits someone from
17 possessing or causing to be present a firearm or
18 dangerous weapon under subsection (a) of the offense.

19 However, under subsection (b), if someone
20 intends to commit a crime with the firearm or
21 dangerous weapon a defendant can be punishable up to
22 five years' imprisonment.

23 Subsection (c) indicates that if someone is
24 killed during the course of bringing a firearm or
25 dangerous weapon into a federal facility that they are

1 to be punished in accordance with the cross-referenced
2 statutes there in 18 USC 930.

3 And if someone is to bring a firearm into a
4 federal courthouse, as in this courthouse or the
5 courtroom or the court building or what have you, they
6 would also be subject to prosecution under 18 USC 930.

7 That offense for bringing a firearm or
8 dangerous weapon into a federal courthouse is a felony
9 punishable up -- up to two years. In this case, the
10 defendant is charged with a misdemeanor under
11 subsection (a).

12 And if I could take a moment to grab my
13 statute.

14 Although there hasn't been a whole lot of
15 case law generated from 18 USC 930 prosecutions, the
16 law has certainly been used to prosecute people for
17 offenses committed under 18 USC 930.

18 I believe it was used in the United States
19 versus Bin Ladin case pertaining to the terrorist
20 bombings that took place in Kenya, and I believe it
21 was Sudan. The cases cited in the government's brief
22 indicate that people have been charged with an 18 USC
23 930 offense for conduct what -- what we have that is
24 similar to this case, where someone is caught bringing
25 a weapon into a federal facility or a federal

1 courthouse. So this is not a law that is esoteric, in
2 the sense that it's been passed and left untouched on
3 the books.

4 Before getting into the detail of the
5 government's argument, I would like to first emphasize
6 how important this appeal is. One of the reasons that
7 our office wanted to appeal this case was the security
8 issues that are involved and how serious it would be,
9 from our perspective, to -- if -- to have precedent
10 established, if the magistrate judge's order was
11 allowed to stand, because it would allow for
12 substantially more firearms and other dangerous
13 weapons to be brought into federal facilities without
14 there being a violation of the statute. And in
15 effect, if the magistrate judge's decision was not
16 reversed, that it would nullify, in large part, a law
17 that was designed to protect federal employees and
18 federal facilities.

19 So we think it's extremely important, perhaps
20 above and beyond the defendant's prosecution -- of
21 course that's important, as well -- but the principle
22 and possible precedent at play is crucial.

23 How did the Court reach its conclusion? The
24 magistrate judge, in response to the defendant's
25 motion to dismiss, concluded that subsection (d) of

1 18 USC 930, which is -- which provides three
2 exceptions -- apply to the defendant's case.

3 Now, the three exceptions are -- and I'm
4 going to paraphrase the first two under 18 USC 930.
5 It says that subsection (a) shall not apply to the
6 first exception, referring to law enforcement officers
7 in the performance of their duties, essentially.

8 The second exception refers to members of the
9 armed forces. Those exceptions are not what's at
10 issue in this case.

11 But, third, the magistrate judge determined
12 that subsection (d)(3) applied in this case, and
13 that's why the magistrate judge dismissed the firearms
14 count against the defendant.

15 Now to quote specifically that subsection, it
16 says that "subsection (a) shall not apply to the
17 lawful carrying of firearms or other dangerous weapons
18 in a federal facility incident to hunting or other
19 lawful purposes."

20 Now, there's no case law out there
21 interpreting or shedding light on "hunting or other
22 lawful purposes," at least what either party has been
23 able to come up with. So I did -- at a last research
24 session prior to today, I still haven't found anything
25 in that regard. There's no definition section under

1 the statute pertaining to, you know, what that could
2 possibly encompass in terms of so-called "other lawful
3 purposes."

4 Judge Schneider looked at the plain meaning
5 of the statute, according to -- based upon his remarks
6 that he made on the bench after the hearing, and then
7 according to his order. And he did not go beyond the
8 statute and look to the legislative history or the
9 congressional intent. And that -- that is the first
10 thing that the Court should do in this case, is to --
11 is to look at the language of the statute. And in
12 that regard, the magistrate judge committed error by
13 assessing the language of the statute and reaching the
14 conclusion that he did.

15 The word "incident" is placed after the term
16 "facility." So again, it reads, "the lawful carrying
17 of firearms or other dangerous weapons in a federal
18 facility incident to hunting or lawful purposes."

19 We think it's key that the word "incident"
20 comes after "federal facility," because it modifies
21 "federal facility," as opposed to it preceding the
22 phrase "carrying of firearms."

23 It modifies -- when you look at the word
24 "incident," there's a lot of -- obviously, a lot of
25 different definitions for "incident." I looked at

1 Webster's and came up with one definition indicating
2 that "incident" is tending to arise or occur as
3 concomitant. "Concomitant" means something that
4 exists or occurs concurrently with something --
5 something else.

6 So the word "incident" qualifies or it limits
7 the meaning of "federal facility," meaning that the
8 exception is a narrow one that does not refer to the
9 situation here where we had someone carry a firearm in
10 a holster prior to entering a federal building, but
11 rather refers to hunting or hunting-related activity.

12 Now, how could that come up? Well, I believe
13 that the instances would be narrow, but I can think of
14 potential lodges that are on hunting lands or parts of
15 buildings where this exception would come into play.

16 Also, the fact that there are two -- that
17 there are three exceptions under subsection (d).
18 Given the fact that there were two preceding
19 exceptions, the law enforcement exception under
20 subsection (d)(1) and the armed forces one for
21 subsection (d)(2), it shows that when you take the
22 whole statute in its context, that the (d)(3) is to be
23 a narrow exception relating to a federal facility that
24 somehow relates to hunting. Because if there was this
25 catchall subsection (d)(3) that talked about any

1 lawful possession of a firearm outside of a federal
2 building, that that would somehow encompass law
3 enforcement and armed forces as well.

4 So the point being, given the fact that --
5 these other exceptions -- it shows that subsection
6 (d)(3) is to be read in a very narrow fashion and not
7 in the manner that Judge Schneider did.

8 Now, speaking of plain meaning, Your Honor --
9 and I know it's kind of tough to follow when you are
10 parsing words from the statute and such. But I think
11 this is an easier concept to grasp in reference to
12 plain meaning.

13 Judge -- the magistrate judge read something
14 into subsection (d)(3) that is not there. Basically,
15 Judge Schneider came up -- his reasoning was that
16 because he lawfully possessed a firearm under state
17 law prior to entering the federal facility, that he
18 was okay under the (d)(3) exception and, therefore,
19 could not be prosecuted under 18 USC 930.

20 Well, there is no language whatsoever that
21 talks about someone's activity outside of a federal
22 facility. The whole gist of 18 USC 930 is focused on
23 what is happening inside a federal facility or inside
24 federal buildings or federal courthouses, federal
25 courtrooms or what have you. So the magistrate erred

1 in that regard while coming up with a plain meaning
2 basis, if you will, to dismiss the government's
3 firearms count.

4 However, even if the Court found that the
5 plain meaning still left things ambiguous, then it is
6 advised and authorized for the Court to go beyond the
7 language of the statute and look to the legislative
8 history and the congressional intent. I -- I think
9 that there's ambiguity. We don't have a definition of
10 what "lawful purposes" means. We certainly don't have
11 any reference in the statute that talks about
12 someone's activity prior to entering a federal
13 facility.

14 So I think the Court should -- should look
15 beyond the statute here and look to other tools to
16 come up with an interpretation of 18 USC 930(d)(3).

17 Now when the Court looks at the congressional
18 intent, the federal law, the case law that is out
19 there which, again, doesn't address this provision but
20 provides some general parameters, and also the
21 potentially irrational results that would follow from
22 the magistrate judge's order's decision, then it
23 should conclude that the decision was wrong and the
24 government's count should not have been dismissed.

25 The major flaw that I see in the magistrate

1 judge's decision was, again, that it wrongfully took
2 into account what the defendant was doing outside of a
3 federal facility. Again, the statute is concerned
4 with what is happening once someone enters a federal
5 facility or a federal courthouse.

6 Again, there's no language in the statute
7 that talks about being concerned about whether someone
8 is lawfully possessing a firearm prior to entering a
9 federal facility.

10 There is no case law, there's no authority
11 whatsoever, that supports the notion that if you're
12 lawfully carrying a weapon outside a federal facility
13 that you could then bring that gun or dangerous weapon
14 inside the federal facility without violating 18 USC
15 930.

16 I also think that the magistrate judge was
17 wrong in determining that there was somehow a purpose.
18 I believe that the term "purpose" connotes some type
19 of activity like hunting or perhaps target shooting or
20 going inside some type of lodge to get a permit for
21 hunting. I don't think someone's carrying of a
22 holstered weapon under New Mexico state law, prior to
23 entering a federal facility, somehow constitutes a
24 purpose under the meaning of the statute.

25 The Court, Your Honor, also ordered --

1 because it took state law into account. Federal law
2 trumps state law and not vice versa. In motions to
3 suppress, as the Court knows, the defendant may have
4 arguments under state law that he cannot bring if he's
5 alleging a Fourth Amendment violation in federal
6 court. Likewise, somebody can be federally prosecuted
7 for being a felon in possession of a firearm, even if
8 a state didn't punish that same conduct, whether it be
9 that a state didn't have a felon in possession law or
10 whether the state has a -- for instance, New Mexico
11 has a ten-year time limit as to when someone could be
12 prosecuted in state court for being a felon in
13 possession of a firearm.

14 Federally, there is no such limit, and state
15 law does not prohibit from -- us bringing federal
16 felon in possession prosecutions in -- against
17 defendants that have priors that are older than ten
18 years.

19 Of course we know from history that the Jim
20 Crow laws of the '60s were thrown out because of
21 federal law.

22 The New Mexico Constitution, Your Honor does
23 not give a person the right to bring a gun into this
24 courtroom or this courthouse, does not give a person
25 the right to bring a weapon onto the grounds of the

1 Kirtland Air Force Base, and it does not provide a
2 so-called lawful purpose to bring a firearm into the
3 federal building on Gold Street. Once you enter a
4 federal enclave, Your Honor, whatever state gun rights
5 you have don't matter.

6 In fact, there is nothing in the New Mexico
7 Constitution or under New Mexico case law or under
8 New Mexico statute that indicates that state gun laws
9 would allow someone to go into a federal building or
10 would allow someone to violate existing federal
11 firearms laws on the books.

12 There is one carrying a concealed weapon
13 offense under state law. It's 30 dash -- excuse me.
14 That's unlawful carrying of a deadly weapon.

15 That is 29-19-8, and that is the Concealed
16 Handgun Carry Act, under the part referring to
17 limitation on license. And that law indicates that
18 nothing -- I'll read straight from it -- "Nothing in
19 the Concealed Handgun Carry Act shall be construed as
20 allowing a licensee in possession of a valid concealed
21 handgun license to carry a concealed handgun on the
22 premises of a preschool."

23 That's subsection (c). What I wanted to read
24 was subsection (a) which said, shall be -- nothing in
25 the law -- I'm paraphrasing there -- shall be

1 construed as allowing a licensee in possession of a
2 valid concealed handgun license to carry a concealed
3 handgun into or on premises where to do so would be in
4 violation of state or federal law.

5 Now, defendant's situation was different --
6 different. He was carrying a holstered firearm. We
7 are not contending that he violated the state law by
8 his open carrying of a weapon. And -- and except that
9 it is lawful under the State of New Mexico.

10 However, I think it's important to note that
11 someone's constitutional right to bear arms under the
12 New Mexico Constitution is not unfettered. We still
13 have state laws that prevent people with weapons to
14 going on school grounds, to going onto a university,
15 to going into a liquor establishment.

16 Then we have this concealed handgun
17 restriction saying you cannot go in -- this doesn't
18 mean you can bring a concealed weapon into a federal
19 facility.

20 I think the upshot is that even state law
21 does not contend that there is a green light for
22 defendants to bring firearms into federal facilities
23 or federal courtrooms, as prohibited by law.

24 The recent case, Your Honor, of District of
25 Columbia versus Heller, I guess is now a seminal case.

1 It ruled that the right to bear arms is an individual
2 right as opposed to a collective one.

3 However, in so doing, the Court pointed out
4 that, quote, nothing in our opinion should be taken to
5 cast doubt on the longstanding prohibitions of the
6 possession of firearms by felons and the mentally ill
7 or laws forbidding the carrying of firearms in
8 sensitive places, as schools and government buildings.

9 Now, I understand that, you know, the
10 defendant didn't challenge the constitutionality of
11 18 USC 930, and Judge Schneider did not make its
12 ruling on constitutional grounds. However, I believe
13 what's important about the Supreme Court recognizing
14 the legitimacy of certain federal firearms
15 prohibitions in terms of laws regarding felons and the
16 prohibition of weapons in government buildings is that
17 the Supreme Court did not make any mention whatsoever
18 that such federal laws need to be subject to state
19 laws, or in any way could be superseded by them. And
20 I think it's also important that the Supreme Court
21 recognized that government buildings are sensitive
22 places.

23 A case cited in the government's brief,
24 Your Honor, is United States versus Rodriguez. It's
25 an Indiana case. And, again, it didn't speak to this

1 particular clause. I believe, from my memory, it
2 dealt with a parking lot can somehow consist of a
3 federal facility.

4 However, the United States versus Rodriguez
5 case did recognize that the purpose behind the statute
6 of 18 USC 930 was to protect federal facilities and to
7 protect federal employees, which makes sense,
8 especially in a post-9/11 world, certainly, with the
9 McVeigh case, where the federal building was blown up.

10 And looking towards the legislative history
11 which is cited in the government's brief, the
12 discussion at that time concerning the bill indicated
13 that, quote, the provision is intended to protect
14 federal employees, witnesses, judges, and others
15 present in places where the business of the federal
16 government is conducted. It is not limited to
17 buildings owned and maintained by the federal
18 government, because some -- because some government
19 employees, such as assistant United States attorneys
20 and federal tax and law enforcement agents often have
21 offices in commercial buildings.

22 Kind of like us at the US Attorney's office
23 at the Bank of Albuquerque building, it's a commercial
24 building. We have federal floors there, and there's a
25 sign outside of the entrance that cites the 18 USC

1 930, saying you can't bring firearms in.

2 That same sign is inside the entrance here at
3 the security checkpoint, again referencing 18 USC 930.

4 Continuing on with the legislative history, I
5 quote, that it is not intended, however, to prohibit
6 the carrying of firearms on federal lands for hunting
7 or other lawful purposes.

8 So that's what we have from the legislative
9 history. And why is that important? It shows that's
10 what they were thinking at that particular time. One,
11 they were very much concerned about security and
12 protection, but they wanted to except hunting-related
13 activity. And at the time, they were thinking of
14 federal lands. And so that morphed -- the final
15 version of the bill morphed into -- "lands" got
16 changed. It became "a federal facility."

17 But it's important to note, Your Honor, that
18 there's nothing in the legislative history that speaks
19 of deferring to state -- state gun rights, or that
20 "incident to hunting or other lawful purposes" will
21 hinge on whether someone is lawfully possessing a
22 firearm outside of a federal facility.

23 There's nothing in the legislative history,
24 Your Honor, that indicates that Congress intended to
25 afford more or less protection to federal facilities,

1 depending on what states they were located in and what
2 state laws were in that particular state.

3 The legislative history speaks of providing
4 protection and -- except in situations involving
5 hunting on federal lands.

6 Your Honor, it is also permissible for the
7 Court to look beyond the statute, and -- if it
8 determines that irrational results will follow if a
9 law or a provision is interpreted in a particular way.
10 We contend that irrational results will follow if the
11 magistrate judge's order is not reversed. It allows
12 people to bring -- the magistrate judge's order -- it
13 allows people to bring weapons into federal facilities
14 as long as they're lawfully possessing those weapons
15 outside of the federal facilities.

16 Well, the possibilities become very broad,
17 indeed. You can -- in New Mexico, you can carry
18 holstered weapons, shoulder -- you can have a holster
19 around your shoulder, you can have it on your waist,
20 you can have a rifle slung across your person, or a
21 shotgun.

22 Other states have -- as the defendant has
23 indicated in his brief, there are a number of states
24 that allow for the open carrying of weapons. That
25 would open up the doors in those places, if that logic

1 is extended where they can bring weapons into the
2 federal facilities in other states.

3 It is possible, Your Honor, to lawfully
4 possess certain dangerous weapons like high-grade
5 dynamite or fully-automatic machine guns. Someone has
6 to get a stamp from the Department of the Treasury and
7 has to go through a certain background procedure. But
8 people out there do own fully-automatic machine guns
9 and are lawful in doing so.

10 Well, taking a look at the magistrate judge's
11 reasoning, they would then have this same out, under
12 the statute, where they could say, "Well, I was
13 lawfully possessing this machine gun prior to entering
14 a federal facility." And it essentially would turn
15 the entire statute on its head, where it would allow
16 for the introduction of a substantial number of
17 firearms for people who are lawfully carrying them
18 outside of the building to bring them inside federal
19 facilities.

20 You would -- it would create a bizarre
21 situation, where the state -- where federal protective
22 service officers would have to determine somehow
23 before arresting someone or seizing a weapon if, under
24 state law, they were supposed to -- that they were
25 carrying it in a concealed or unconcealed fashion

1 prior to entering the federal facility.

2 I think it could result in a lot of
3 litigation, in terms of someone saying, "Well, I have
4 a right to have this firearm under the New Mexico
5 Constitution," or Maine, or whatever the case may be,
6 "that you can't take this firearm away from me, and
7 this -- this law 18 USC 930 does not apply."

8 Your Honor, I think when you look at the
9 plain -- look at the language of the statute -- I have
10 been using the term "plain meaning." If you look at
11 the language of the statute, you can conclude that the
12 magistrate judge got it wrong because -- two things:
13 "incident" modifies "federal facilities." And,
14 secondly, there's no mention in the language
15 whatsoever that it's concerned with conduct outside of
16 a federal facility.

17 But if the Court wants to go beyond the
18 language of the statute, which I think it would be
19 justified in doing so, you'd find that the legislative
20 history and the congressional intent was to protect
21 federal employees and federal facilities. And that to
22 interpret and allow it to stand, the magistrate
23 judge's decision would have the exception -- devour
24 the whole gist of the statute. And I think the Courts
25 should read the statute to the point where it gives it

1 its true meaning and effect, and it salvages it from
2 being nullified.

3 I'll have a few remarks on rebuttal, if
4 that's okay with the Court. And nothing further at
5 this time.

6 THE COURT: All right. Thank you.

7 All right. Let me hear from the defense,
8 Mr. Hotchkiss.

9 MR. HOTCHKISS: May it please the Court and
10 Mr. Walsh.

11 Your Honor, we respectfully request that you
12 affirm Judge Schneider's ruling.

13 First of all, I think there were things that
14 Mr. Walsh argued that have never been presented in
15 this case, either in the -- his response below, in his
16 argument below, in his reply, in his brief in this
17 case.

18 For instance, his analysis of the word
19 "incident" appears nowhere. It wasn't in his response
20 below, so he's raising arguments in oral argument here
21 for the first time that he hadn't even raised
22 previously.

23 The fact that it's a de novo standard of
24 review does not eliminate the fact that this is an
25 on-record appeal subject to waiver. We believe that

1 argument has been waived.

2 There is -- you can -- you can certainly
3 review the -- his pleadings, Your Honor, but there is
4 no argument from Mr. Walsh anywhere in this case on
5 the definition of the word "incident." I have made
6 that argument, but Mr. Walsh never responded.

7 Similarly, his argument regarding "purpose,"
8 there is no argument from Mr. Walsh anywhere except
9 today in oral argument about "purpose" meaning
10 conduct. There is no argument from Mr. Walsh. Again,
11 we believe that was not raised and should be
12 considered waived by the government.

13 The final point along those lines is there is
14 no evidence in this record about the things that
15 Mr. Walsh said is -- are located within 500 Gold.
16 There was no testimony, there are no facts; similarly
17 waived.

18 The --

19 THE COURT: You would agree, however, that
20 500 Gold is a federal facility?

21 MR. HOTCHKISS: We have not disputed that it
22 is a federal facility. And as a federal facility,
23 Your Honor, it's a very -- very interesting, because I
24 think I've laid out in my brief how it -- that the law
25 treats that the three exceptions under subsection (d)

1 apply to federal facilities, but the three exceptions
2 under (d) do not apply to a federal court facility.
3 Only (d)(1) and (d)(2) apply to a federal court
4 facility. That is a clear indication that Congress
5 did look at these statutes and did allow for broader
6 possession of firearms in federal facilities versus
7 federal court facilities, as I pointed out in the
8 brief.

9 The government has referred to cases -- three
10 cases that it had cited on page 10 of its brief about
11 other -- I think the word was "similar." The word is
12 used on page 10 of the government's brief, that --
13 presenting fact patterns that are similar to the one
14 in this case. Well, that's just not true.

15 Two of those cases -- one involves a pistol
16 carried in a gym bag. That's a concealed firearm.
17 The firearm wasn't concealed in this case.

18 The firearm in Carson was in a briefcase.
19 That's not the case here. It was open carried, so
20 it's very different.

21 And finally, in the Murray case, this issue
22 was not even presented. So I don't know why this
23 issue wasn't presented, but it wasn't presented. So
24 those cases aren't similar to this case.

25 The word -- as I have presented in my

1 brief -- the word "incident," Your Honor, does modify
2 the possession. It's lawful possession incident to
3 hunting or other lawful purposes.

4 The word "incident" does not modify "federal
5 facility." It modifies lawful possession incident to
6 hunting or other lawful purposes.

7 And the biggest indication of that is the
8 fact that you cannot hunt in a federal facility. A
9 federal facility is a building containing federal
10 employees. You can't hunt in a federal facility.

11 So the phrase "incident to hunting or other
12 lawful purposes" then logically must mean what one was
13 doing before you entered the federal facility, from
14 the plain meaning of the words of the statute.

15 Also the statute -- Mr. Walsh had stated that
16 part of the parade of horribles is that he asserted
17 that as long as somebody is lawfully possessing a
18 weapon or dangerous -- they can get -- take that
19 weapon into the federal facility, under Judge
20 Schneider's ruling. Clearly, an incorrect statement
21 of the law. You have to be lawfully possessing
22 incident to hunting or other lawful purposes.

23 So as I stated in my brief, somebody could be
24 lawfully possessing but for an unlawful purpose. And
25 you cannot then lawfully carry that weapon into the

1 federal building.

2 So lawful possession is not enough. You have
3 to lawfully possess for a lawful purpose. Similarly,
4 you couldn't unlawfully possess for a lawful purpose.
5 You have to have both things.

6 And in our case, we did. And because of the
7 language of the statute and because unequivocally
8 under Article 2, Section 6 of the New Mexico
9 Constitution, open carrying of a firearm is completely
10 constitutional. It is so constitutional, Your Honor,
11 that the case that recognized that, that I cited in my
12 brief, which is the case of -- it's on page 4 of my
13 brief, Your Honor -- City of Las Vegas versus Moberg.
14 In that case, Moberg open carried a firearm into a
15 police station and was charged with violating a city
16 ordinance. And the appellate court in the State of
17 New Mexico reversed and said, under Article 2,
18 Section 6, that is not unlawful.

19 I'm not surprised that any -- that nowhere in
20 the New Mexico State Constitution or the New Mexico
21 State statutes is there any attempted authorization
22 for carrying into federal buildings. I mean, that's
23 clearly outside the purview of the legislature of the
24 State of New Mexico. That doesn't surprise me.

25 But where it becomes relevant here is the

1 plain language and plain meaning of (d)(3) of 18 USC
2 930 that says "incident to hunting or other lawful
3 purposes."

4 The purpose here, as plainly stated by the
5 plain language of Article 2, Section 6 of the
6 New Mexico Constitution, is self-defense. That is a
7 purpose. That's why people carry firearms lawfully.
8 And that is written right into the state Constitution.
9 That is the purpose.

10 So the word "purpose" doesn't have any -- I
11 think the -- I mean, the purpose is stated right in
12 the face of Article 2, Section 6 of the New Mexico
13 Constitution.

14 Also, as I pointed out in my brief, that
15 there is a part of Judge Schneider's ruling that the
16 government didn't address in its brief and didn't
17 address in its oral argument this morning. And that's
18 the specific part -- the specific part of Judge
19 Schneider's ruling concerning the most serious concern
20 that Mr. Walsh has, which is the safety of federal
21 employees. And Judge Schneider, in part of his oral
22 ruling from the bench, specifically addressed that.
23 The government has not addressed it at all in its
24 brief or in its oral argument to you today.

25 Judge Schneider believes, and I think it is

1 supported by an expressed provision in 930, that
2 this -- in complementing his ruling -- that 930(d)(3)
3 does not criminalize Mr. De La Cruz-Bancroft's conduct
4 in this case; that that ruling does not disarm the
5 ability to prohibit people from entering the building
6 with weapons. Judge Schneider's specific ruling was
7 those decisions can still be made.

8 And in fact, if we act -- if we look at the
9 conduct in this case on the day in question,
10 Your Honor, let's look at what happened.

11 Mr. De La Cruz-Bancroft walks in, open
12 carrying a firearm. The first person he encounters at
13 the checkpoint lets him go through.

14 Mr. Miller encounters him later on and
15 determines that Mr. De La Cruz-Bancroft cannot possess
16 the firearm in the building. Does he arrest him? No.
17 He asks him, "You have to take that outside, and then
18 you can come back and resume your business." And
19 that's what happened. That is Judge Schneider's
20 ruling. That's the way Judge Schneider would have it
21 work under his ruling without a criminal charge.

22 Here's another example to, I believe, support
23 Judge Schneider's interpretation of the statute and
24 mine, and we'll use the US Attorney's office as an
25 example.

1 Where the US Attorney's office is located is
2 in a commercial building. It's not owned by the
3 federal government. It's not a federal lands deal.
4 To my knowledge, under the laws of the State of
5 New Mexico, I believe I could open carry a firearm
6 into the Hyatt Hotel. I could go into the elevator
7 with the intent on going to a floor where there is no
8 federal facility, whatever floor that may be.

9 Let's say, by mistake, I get off on the floor
10 where the US Attorney's office is. So while I'm in
11 the elevator I'm lawfully possessing. I mistakenly
12 get off on the floor of the US Attorney's office and I
13 take a step out, and there is Mr. Walsh with
14 Mr. Miller.

15 Under Judge Schneider's ruling, I would
16 not -- I should not be -- I have not violated a
17 criminal statute, because I was lawfully possessing
18 incident to a lawful purpose, and I step out onto this
19 floor. That's what I believe the statute -- it's that
20 kind of a situation, where the language makes complete
21 and plain sense.

22 Just like when Mr. De La Cruz walks in off
23 the street, just like a hunter who is lawfully
24 hunting -- because you can't hunt in a federal
25 facility. The only thing you would hunt in a federal

1 facility are human beings, and that would be a crime.

2 So just like a hunter, who is lawfully
3 possessing pursuant to the activity of hunting, steps
4 into a federal facility, they're not in violation of
5 the statute, just like Mr. De La Cruz-Bancroft.

6 That's the case. That's how the statute interacts
7 with the facts. That's why the statute (d)(3) --
8 incidentally, the government apparently doesn't
9 challenge the plain meaning of subsection (a).

10 See, this isn't an attack on the entire
11 statute, Your Honor, plain meaning. This is a
12 selective attack on one portion of it, because
13 Mr. Walsh hasn't attacked the plain meaning of (a) or
14 any other part of the statute. It is a part of (d)(3)
15 that he is complaining is not plainly worded. We
16 believe it is all plainly worded, as did Judge
17 Schneider.

18 For all of those reasons, Your Honor, that is
19 why, under this statute, why Article 2, Section 6 of
20 the New Mexico Constitution is relevant.

21 Question: Does federal law define when
22 somebody is lawfully hunting or does state law?

23 I believe that is a state law question. I
24 don't know of any federal law, unless it pertains to a
25 federal preserve. But hunting is typically a state

1 law matter.

2 And I just want to echo some of what
3 Mr. Walsh said concerning the Heller case.
4 Your Honor, I -- I don't think that has, really, any
5 relevance here at all. I mean, that was a Second
6 Amendment case, where we're not arguing Second
7 Amendment here. And we are not disputing the validity
8 of the statute; we're attempting to determine its
9 meaning.

10 So I -- I see that -- well, we didn't file a
11 motion to have the statute declared unconstitutional
12 or anything of that nature.

13 I believe I made a very thorough argument in
14 my brief regarding if you disagree with Judge
15 Schneider's finding that the statute was plain -- and
16 I believe I made a thorough argument about that.

17 I think that the legislative history here
18 offered by the government just is not -- I mean, to
19 say it's not helpful is to be very charitable. It's
20 actually extremely confusing, because it talks -- the
21 two confusing parts about it is that part cited by the
22 government. In the first part of that it contains a
23 flat prohibition on carrying firearms into federal
24 facilities, and that clearly isn't the case under the
25 statute. There are three exceptions.

1 And then the last point, that it pertains to
2 federal lands, well, this isn't a statute pertaining
3 to federal lands. It's a statute pertaining to
4 federal facilities and federal court facilities.

5 And it's actually worse than not helpful,
6 it's confusing. And this is exactly the kind of case
7 where, as some of the law I cited to, that one should
8 be cautious to look behind the plain meaning of words
9 in the statute.

10 And this is a good example of why, to look at
11 something like legislative history, because the
12 offered legislative history is confusing, at best, and
13 tends to insert words. It's only if you want to look
14 at the legislative history. In my opinion, the
15 statute becomes confusing or ambiguous by throwing new
16 phrases and new words into the statute that it plainly
17 does not contain.

18 And then I think finally, Your Honor,
19 pertaining to the irrational and absurd results, I --
20 I don't see this as complicated, like Mr. Walsh sees
21 this. I mean, we all know that police officers have
22 to deal with a lot, and we're not talking even about
23 police officers here. But this federal building or
24 federal facilities do not move. They are in their
25 building. So the state law rarely changes on

1 firearms. But all -- if you're working at a federal
2 facility in the state of New Mexico, you just have to
3 know the state law. Just like you have to know the
4 state law about other things. I -- I don't -- I don't
5 understand that that's that complicated.

6 I'm not aware of the law regarding whether
7 it's legal to walk down the street with a stick of
8 dynamite. Admittedly, I don't. But I think all of
9 that, again, is -- falls under the umbrella of the
10 part of Judge Schneider's ruling that Mr. Walsh hasn't
11 even addressed.

12 Just like down below, Your Honor. I mean, to
13 my understanding, the way things work in this
14 courthouse is that if you look at the statute, police
15 officers and military people should be able to bring
16 their weapons into the -- this courtroom. I believe
17 they're required to check them downstairs. I don't
18 understand why that can't be the case in a federal
19 facility, or require them to take them back to their
20 vehicle, like Mr. De La Cruz was in this case; that we
21 don't have to twist words to make activity criminal to
22 be able to regulate the activity.

23 And I believe that's the heart of Judge
24 Schneider's ruling, the complete ruling of Judge
25 Schneider. So for all of those reasons, Your Honor,

1 we would request that you affirm Judge Schneider's
2 ruling, and remand this to enforce the dismissal
3 order.

4 Thank you.

5 THE COURT: Thank you, Mr. Hotchkiss.
6 Anything further?

7 MR. WALSH: Yes. Just some rebuttal points,
8 Your Honor.

9 Your Honor, with regards to me asking the
10 Court to look at "incident" and "purpose," I'm not
11 spinning any new case law interpretation. I'm asking
12 the Court to take a look at the statute, like it
13 should. And I believe the Court can certainly consult
14 a dictionary, as well, and come up with an
15 interpretation of -- or a definition, rather, of
16 "incident." So there have been -- certainly has been
17 no waiver there, in terms of arguments that the
18 government can present. This is de novo.

19 It has been stipulated that the federal
20 facility we're talking about is the one on 500 Gold
21 Street. True, some of the federal offices that were
22 there -- and I didn't make mention of those in a brief
23 or beforehand. I was just trying to provide some
24 backdrop. It doesn't matter, in terms of the Court's
25 ultimate decision.

1 Counsel made the comment that one cannot hunt
2 in a federal facility. That's true. But one can have
3 a federal facility that relates to hunting, and that's
4 what subsection (d)(3) refers to.

5 And he goes on to say that, logically, it
6 must means what one was doing before entering the
7 facility matters, but there's no language to that
8 effect in the statute. There's no case law to that
9 effect. There's no authority whatsoever that 18 USC
10 930 in any way is supposed to take into account what
11 someone is doing prior to entering a federal facility.

12 That's where the magistrate judge's order was
13 flawed, and that's one main reason that the magistrate
14 judge got it wrong.

15 Counsel went on to again cite the New Mexico
16 Constitution and some New Mexico case law. It does
17 not matter. It has no bearing on 18 USC 930. It has
18 no bearing in this court.

19 I don't get Counsel's argument as to what the
20 lawful purpose was. I mean, essentially, now anyone
21 can say --

22 THE COURT: Self-defense is what I
23 understood.

24 MR. WALSH: Yeah. I think, basically, now
25 anyone can say self-defense, put a weapon on their

1 person, and go into a federal facility. And I think
2 it's important, Your Honor to realize that federal
3 facilities are varied.

4 We talked about the US Attorney's office. We
5 don't have a whole lot of security there. We've got
6 some security here. We have ATF, which is on the 15th
7 floor, and there's no security personnel. Outside of
8 the offices there we have 18 USC 930 signs.

9 And so in reference to his comment about
10 Judge Schneider saying, "Well, there are no security
11 concerns. Just tell someone they can't bring a gun
12 into a federal facility." Well, that doesn't help
13 much. By just telling someone that they can't bring a
14 gun, that doesn't do much to further the objectives
15 behind the statute, which is to protect federal
16 employees and protect federal facilities.

17 And it certainly doesn't give much comfort, I
18 would think, to employees of whether it be a federal
19 court or a federal facility, that if someone is
20 lawfully possessing a firearm outside a federal
21 facility can walk in, and the only thing that they are
22 subjected to is some type of oral reprimand.

23 I mean, we have laws on the books to deter
24 particular conduct. And if you don't have any laws --
25 or teeth to those laws, then what's to stop people

1 from trying to sneak firearms into federal facilities?

2 At worst, they face an oral reprimand.

3 Now we heard about the concealed -- made
4 mention of the concealed carrying law where it said,
5 well, nothing should be construed about this allowing
6 you to go into a federal building.

7 But taking the logic further, I mean,
8 couldn't someone then argue, "Well, under a carry
9 concealed situation, that I was lawfully possessing it
10 prior to entering a federal facility and, therefore, I
11 was lawful in trying to bring it into a federal
12 facility"?

13 In reference to the dynamite and machine gun,
14 that the possibilities are -- are myriad. When you
15 take into account all of the state laws that are out
16 there, again, you can lawfully possess a whole lot of
17 weapons and sometimes lawfully possess destructive
18 devices. Again, it does not matter whether you can
19 lawfully possess something, assert a self-defense
20 basis behind that, and then be allowed to bring it
21 into 18 USC 930.

22 Counsel went on to give some facts about what
23 happened when the defendant went into the federal
24 security building -- excuse me -- the federal building
25 on Gold Street. He left out the part that the

1 defendant was wearing a badge and flashed a fraudulent
2 identification. I don't think it matters for the
3 purposes of this appeal, but I just thought I'd fill
4 in the facts for Your Honor on that.

5 As to how Inspector Miller handled the
6 situation, that's not relevant for the purposes of
7 this appeal. We'll let the jury decide, if we get
8 there, as to the import of all of that.

9 I'm not given much comfort, if someone is --
10 at the US Attorney's office is wearing a holstered
11 firearm and, at best, I can ask them to remove that
12 firearm.

13 Can I call the police? Can that person be
14 arrested? Perhaps for trespassing.

15 Can they be arrested for a violation under
16 18 USC 930? Well, no, if the magistrate judge's order
17 stands, because they will have that holstered weapon
18 self-defense argument to present. And that flips the
19 statute on its head.

20 You know, when the whole statute was designed
21 to protect people, to allow the administration of
22 justice, the administration of federal business with
23 some security, I think that that kind of nullifies a
24 large portion of the statute, and it should not be
25 interpreted to do that.

1 Now the relevance of the Keller decision,
2 again, I -- I stated there's no constitutionality
3 argument that was pitched, and I understand that. But
4 even the Supreme Court has recognized that government
5 buildings are sensitive, and that is key.

6 Now as to Mr. Hotchkiss' confusion as to the
7 legislative history, I don't quite understand
8 what's -- what the confusion is with respect to that.

9 Two points. One, they're concerned about
10 security. They want to protect federal employees and
11 federal facilities. Secondly, that exception referred
12 to federal hunting, of hunting relating to federal
13 lands, like a situation like a lodge, not a situation
14 that was -- that took place in this case.

15 And I don't think there was any word twisting
16 that has gone on on behalf of the government. Again,
17 there's no language in the statute that makes
18 reference to state law or what someone was doing prior
19 to entering the federal facility.

20 We contend that the stakes are important,
21 indeed, because of the security-related issues. We
22 disagree with the magistrate judge in saying that
23 there wouldn't be security concerns, because then
24 someone could not be punished under 18 USC 930, and
25 there would be no deterrence effect but for some type

1 of oral reprimand. Federal facilities would not be
2 protected.

3 It would allow a defendant, such as we have
4 here, to be emboldened and to continue to wear a -- a
5 holster with a firearm into the numerous federal
6 facilities, whether it be the IRS building, ATF,
7 whatever the case may be. We think it opens up the
8 floodgates as to the possible weapons that someone
9 could lawfully possess and say, "I have it for
10 self-defense," and bring it into a federal building.
11 Then what happens?

12 So for those reasons, Your Honor, we request
13 of the Court that it reverse Judge Schneider's
14 decision with respect to dismissing the violation, or
15 the 18 USC 930 count against the defendant.

16 Thank you.

17 THE COURT: All right. Let me just give you
18 some of my thoughts here, and you can comment.

19 MR. HOTCHKISS: Your Honor?

20 THE COURT: Yes.

21 MR. HOTCHKISS: If I may, I just want to --

22 THE COURT: Okay.

23 MR. HOTCHKISS: No more argument. I want to
24 correct one thing I said. And that is that when I
25 used the example of the US Attorney's office in

1 getting off the elevator, it was my error. The US
2 Attorney's office actually falls within the category
3 and definition of a federal court facility under
4 (g)(3) of the statute.

5 I would just simply suggest that you
6 substitute the federal public defender's office for
7 the US Attorney's office for my remarks. Because that
8 would confuse it, and it was, in fact, factually
9 wrong. So I just wanted to correct that for the
10 record.

11 THE COURT: All right. So we have a
12 situation here where we have a federal statute that
13 prohibits a person from possessing a firearm or other
14 dangerous weapon in a federal facility.

15 We have, also within this statute, several
16 exceptions to that. And so then, of course, we are
17 faced with a situation as to whether or not one of the
18 exceptions applies in this case.

19 Now, I understand Judge Schneider's ruling.
20 I understand the government's position here, that the
21 decision that Judge Schneider made would basically
22 undermine the statute.

23 And I understand -- I understand Judge
24 Schneider's determination that a federal facility
25 could still -- there could still be a prohibition

1 against the carrying of firearms into a federal
2 facility. The question is whether or not it would be
3 criminalized to carry a firearm into a federal
4 facility.

5 So here, the exception that we're dealing
6 with speaks to the lawful -- the prohibition doesn't
7 apply to the lawful carrying of firearms in a federal
8 facility incident to hunting or other lawful purposes.
9 So from everything I've determined, there isn't much
10 case law to help us with the meaning of "other lawful
11 purposes."

12 And so I am -- basically, I'm looking at the
13 statute. I'm looking at the plain language of the
14 statute. "A federal facility" seems to me to say
15 "federal facility," as opposed to federal lands. But
16 I understand the argument that you might have federal
17 lands that contain a building that is a federal
18 facility. So I understand your argument.

19 One of the issues in my mind is where, here,
20 you've got the lawful carrying of a firearm in a
21 federal facility incident to -- well, we know it's not
22 hunting, or at least I assume it's not hunting. So it
23 is incident to other lawful purposes. And I'm not
24 clear how other lawful purposes should relate to
25 federal facility.

1 So for example, in the previous, the first
2 two -- actually, I'm not even real clear on the second
3 exception, the armed forces exception.

4 The first exception, with respect to law
5 enforcement, it looks like -- it appears as though in
6 that exception the exception exists so -- almost as a
7 security measure.

8 I'm not quite sure about the second
9 exception, the possession of a firearm by a member of
10 the armed forces. I'm just -- I'm going to disregard
11 those two exceptions because they don't apply, anyway.

12 But the third exception, do I look at the
13 purpose -- I understand the government's argument
14 looked to the other lawful purpose with relation to
15 the federal facility. Any -- am I supposed to look
16 at, in interpreting this statute, the purpose that the
17 defendant took the gun to the federal facility? Am I
18 supposed look at that? Is that a question at all, in
19 interpreting the statute?

20 And I'm kind of going here on stream of
21 consciousness. So if -- and I realize that. So if
22 I -- if you have questions about my thoughts please
23 feel free to ask me. Because, honestly, I'm trying to
24 work my way through this after having heard your
25 arguments.

1 So I guess what I'm saying is, is the other
2 lawful purpose supposed to be related to, somehow, the
3 federal facility?

4 MR. WALSH: Your Honor, I -- I think the
5 word, again, "incident," modifies "federal facility."
6 So I -- I think it does. I think we're -- what it
7 means and what it refers to is some type of facility
8 that is somehow interconnected with hunting, like a
9 lodge on -- in the Yellowstone National Park or -- and
10 that the lawful purposes would have to be some
11 activity that is consistent with hunting, something
12 like target shooting, or maybe some type of armory on
13 national land.

14 So I -- I think it's very narrow, in terms of
15 what lawful purposes can be construed as, because it
16 is preceded by "hunting." And "incident" modifies the
17 "federal facility," in terms of what kind of federal
18 facility would qualify for the (d)(3).

19 MR. HOTCHKISS: In response, I don't see how
20 "incident" modifies "federal facility." We're talking
21 the -- the statute -- what is criminalized in the
22 statute isn't federal facility, it is the possession
23 of the firearm in a federal facility. So the
24 exception must apply to the possession of a firearm.

25 And so the "incident" modifies the lawful

1 carrying language in a federal facility incident to
2 hunting or other lawful purposes.

3 Under Mr. Walsh's argument, the easiest way
4 for the statute to be worded, to read the way he wants
5 it to be, would be "hunting or related purposes." It
6 doesn't say that. It says "hunting or other
7 purposes." If it was to be like Mr. Walsh would say
8 it, that's how it would say it, hunting or related
9 purposes, but it doesn't say that.

10 THE COURT: Well, if you just forget about
11 hunting for a moment, and if you just read it, "this
12 shall not apply to the lawful carrying of firearms or
13 other dangerous weapons in a federal facility incident
14 to other lawful purposes," what does that mean to you?

15 MR. HOTCHKISS: Well, I think you probably
16 would have to take -- if you're going to take
17 "hunting" out, the "hunting" and the "or," then you
18 probably have to take the "other." So it would be
19 "incident to lawful purposes." Then that would be a
20 lawful purpose.

21 THE COURT: But what is the purpose that
22 we're dealing with here, then?

23 MR. HOTCHKISS: Well, I think, for instance,
24 by the plain meaning of Article -- the plain words of
25 Article 2, Section 6 -- and not just that. But why

1 do -- why is America washed with guns, Your Honor? Is
2 it criminals or is it a -- washing guns with
3 law-abiding citizens who want to have them for their
4 personal security?

5 I think it's the latter. There are a lot of
6 criminals that have them. But the reason that we have
7 the Second Amendment and other aspects of gun
8 possession is people want them for their personal
9 security. And that's the purpose, self-defense,
10 personal security.

11 THE COURT: Well, does this statute then
12 suggest that we look at the specific purpose,
13 security, as justification for taking a firearm into a
14 federal facility? In other words, do we have to look
15 to see why self-protection was necessary --

16 MR. HOTCHKISS: I don't believe so.

17 THE COURT: -- in a federal facility?

18 MR. HOTCHKISS: Not any more than when
19 somebody goes to get a weapon, are they asked, "What
20 kind of security interest do you have?"

21 People -- different people have their own
22 different levels of security and personal security.
23 And some gun owners don't even have to carry them to
24 feel secure. Some do.

25 MR. WALSH: Well, I mean, this is an aside,

1 and I don't have a problem with the Court, you know,
2 considering the self-defense notion. But that really
3 hasn't been brought out before as far as why he had
4 it.

5 THE COURT: And that's why I'm asking. In
6 re- -- in analyzing this statute, because it says
7 "other lawful purposes," are we supposed to look at
8 what the -- whether there were other lawful purposes
9 or what those purposes are?

10 MR. WALSH: I think -- I think one thing that
11 it does not refer to is that it does not encompass
12 conduct outside of a federal facility. So that's
13 where the defendant's argument fails.

14 You know, it's referring to some type of
15 lawful purpose that is taking place inside a federal
16 facility, like getting a hunting permit or perhaps
17 being on a federal firing range or something along
18 those lines.

19 You know, again, we're hearing references to
20 the New Mexico Constitution. It does not apply. It
21 does not matter.

22 MR. HOTCHKISS: I don't know that it's a
23 requirement, to get a hunting license, to carry a gun
24 to get one. I mean, you could walk in to get a
25 hunting license without bringing your gun with you.

1 There's no requirement that you bring your gun with
2 you.

3 The way the statute is interpreted and the
4 way that I interpret it, and I believe the way Judge
5 Schneider interpreted it, is that since -- you can try
6 to take the word "hunting" out of the statute, but
7 it's there and we have to deal with it.

8 You can't hunt in a federal facility. That's
9 a crime. It would not be a lawful purpose. You can't
10 hunt in a federal facility.

11 So the reference to it has to, therefore,
12 mean what you were doing before you stepped across
13 that line. Before Mr. De La Cruz stepped across that
14 line into the federal facility, that's what it has to
15 mean.

16 THE COURT: Well, I agree that you can't hunt
17 in a federal facility. But that's -- then where I
18 look at the word "incident to," I mean, I don't -- I
19 don't read this language as meaning that you -- that
20 hunting in a federal facility is addressed. I mean,
21 when it's "incident to hunting," then -- I mean, I see
22 your point. Don't -- I don't want you to think that I
23 don't understand what you're arguing. I do understand
24 what you're arguing.

25 I guess, though, that I'm more focused on the

1 "other lawful purposes." You're telling me that
2 "other lawful purposes" can't be read independent of
3 "hunting."

4 MR. HOTCHKISS: No, I -- I am -- my argument
5 is that it is other -- "other" means other than
6 hunting. So in that respect, I do read it
7 independent. But there is no -- there are no commas.
8 There is no way that this is -- that the way that this
9 is written -- in my opinion, the plain meaning of it
10 is "hunting or other lawful purposes." It's not
11 hunting or related purposes to hunting, or hunting and
12 the like. "Other lawful purposes," like I cited
13 Luckley versus Vallejo in my brief.

14 Broad meaning -- that phrase is typically
15 given a broad meaning. And it doesn't say "related,"
16 and there is no limiting language in the statute.
17 It's "other lawful purposes."

18 And the last point is is that I have
19 consistently cited to Article 2, Section 6 of the
20 New Mexico Constitution. And right on the face of it
21 is security and defense as the purpose. So that is in
22 the record. That has been brought forth.

23 THE COURT: Did you have something else?

24 MR. WALSH: Yes. I'd like to reiterate,
25 Your Honor. I think the defense is reading language

1 into subsection (d)(3) that doesn't exist. You know,
2 he is indicating that it has to refer to what he did.
3 What were you doing before you crossed that line?

4 We disagree. We think that the "other lawful
5 purposes" has to be read within the context of
6 hunting. Obviously, yes, you can't hunt in a -- in a
7 federal building, but you can have a lodge that is
8 incident to hunting, a situation where you can place
9 your rifles outside of a particular building, and they
10 wanted to be sure that it didn't encompass any type of
11 conduct along those lines.

12 I didn't quite get from that citation in
13 defendant's brief that the "other lawful purposes" is
14 supposed to be read in a broad manner.

15 I cited in our brief to Begay, the armed
16 career criminal statute, where there was an
17 "otherwise" clause, so-called "residual" clause. The
18 point being, without getting into too much detail, the
19 Supreme Court recently said that, "Hey, you've got to
20 look at the words that preceded the 'otherwise' clause
21 to give it context." And that -- it wasn't broad and,
22 therefore, it did not include a felony DUI. It kind
23 of provides some guidance here, in that "other lawful
24 purposes" has to be read within the context of
25 "hunting," as well. And especially when you have the

1 legislative history that indicates as much. So...

2 THE COURT: Let me ask you this. Do either
3 of you think that the applicability of the exception,
4 more specifically, the "other lawful purposes," is a
5 fact issue?

6 MR. WALSH: I don't know. I don't -- I'm not
7 entirely sure. It was certainly something that I
8 think both parties were going to research if the
9 government prevailed in this appeal. Because, then,
10 we've got a jury trial on the horizon. And whether
11 that could be presented to a jury or not, I'm not
12 entirely sure. I wouldn't want to kind of speculate
13 before the Court.

14 THE COURT: All right.

15 Do you have any comment on that,
16 Mr. Hotchkiss?

17 MR. HOTCHKISS: I don't. We've just been
18 relying on the fact that in Article 2, Section 6 it
19 plainly states there "for security." And so I -- I
20 have -- I don't have any thoughts about that right
21 now, Your Honor.

22 THE COURT: All right.

23 Well, do either of you have any other
24 comments?

25 MR. WALSH: Nothing further at this time.

1 MR. HOTCHKISS: Nothing further, Your Honor.

2 THE COURT: All right. I was -- I'm going to
3 take just a couple of minutes. I'll return, and
4 either I will give you my decision or I will tell you
5 when you can expect my decision. So don't go too far
6 away. I'll just take a short recess.

7 (A recess was taken.)

8 THE COURT: Please be seated.

9 Well, there are a couple of other things that
10 I would like to look at, so I'm going to take this
11 matter under advisement, and I will get a decision to
12 you before the holiday.

13 So is there anything else to come before the
14 Court?

15 MR. WALSH: I was just going to say,
16 Your Honor, as far as my particular schedule goes, if
17 the Court needs additional time, that's fine with me.
18 I'm set to be on leave. But so as far as --

19 THE COURT: I just hate to leave you all
20 hanging any longer than necessary. If I can get it
21 out next week, I will. And if I need a little time,
22 I -- I won't delay.

23 MR. WALSH: The case has been stayed, I
24 think, pending the resolution of this. So...

25 THE COURT: Okay. All right.

1 Is there anything further?

2 MR. HOTCHKISS: Nothing further, Your Honor.

3 THE COURT: All right. With that, then,

4 we'll been in recess.

5 (Proceedings concluded.)

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CERTIFICATION

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: December 18, 2009

PAUL BACA, RPR, CCR
Certified Court Reporter #112
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